



**TENNESSEE
STATE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION
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MEMORANDUM

TO: Supervisors of Special Education

FROM: Joseph Fisher, Assistant Commissioner of Special Education

DATE: June 12, 2002

RE: LEAs where parents reside are responsible for child find and special education services for children with disabilities unilaterally placed by parents in private schools located outside their jurisdiction.

Our office has received numerous inquiries concerning the above dilemma. The titular scenario is: parents of a child with a disability reside in LEA A and enroll their child with a disability at a private school located in LEA B, which LEA is responsible for child find and the provision of services?

A review of OSEP policies, publications, regulations, and other materials reveals it is within the State's discretion to determine whether the LEA where the private school is located or the LEA of the parents' residence is responsible for locating and evaluating a child with a disability and including that child in its annual count of eligible parentally-placed private school children with disabilities. This count is conducted for determining the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

The U.S. Department of Education's regulation 34 C.F.R. § 300.125(a)(1) requires:

The State must have in effect policies and procedures to ensure that -

(i) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; (emphasis added)

The U.S. Department of Education's regulation 34 C.F.R. § 300.451 requires:

(a) Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious-school children residing in the jurisdiction of the LEA... (emphasis added).

State law T.C.A. § 49-10-108(a)(1) provides: ***Every school district shall test and examine, or cause to be tested and examined, each child attending the public and private schools within its boundaries in order to determine whether such child is disabled.*** (emphasis added).

The Department adopts a policy assigning responsibility for child find to the LEA of the parent's residence. If the LEA where the private school is located identifies a child as a child suspected of having a disability, this LEA shall notify the LEA of the parent's residence so that appropriate evaluations may be conducted by the LEA where the parent resides. This action will satisfy T.C.A. § 49-10-108(a)(1) by causing testing and examinations to take place.

Additionally, the LEA where the parent resides shall include the child in its annual count of eligible parentally-placed private school children with disabilities that is conducted for determining the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

LEAs are encouraged to work in consultation with appropriate representatives of parentally-placed private school children with disabilities to ensure that services are provided at sites that will not require significant transportation costs. If any child is selected for services and the service is provided away from the school the child attends, the child must be provided transportation to the service if it is necessary for the child to benefit from or participate in the service.

Because children unilaterally placed in private schools by parents have no individual entitlement to special education services, it is not unlawful for an LEA to elect not to provide services to parentally-placed private school children with disabilities who reside in the LEA's jurisdiction but who attend private schools located outside of the LEA's boundaries.

If we can be of further assistance please feel free to contact us.